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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 352

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY,
Appellant,

vs.

ILLINOIS COMMERCE COMMISSION ex rel.
ILLINOIS CENTRAL RAILROAD COMPANY,
Appellees.

On appeal from the Supreme Court of the State of Illinois.

Motion to Dismiss or Affirm

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For the sake of brevity and to conserve the time of the court, Appellees, Illinois Commerce Commission (hereinafter called "Illinois Commission") and Illinois Central Railroad Company (hereinafter called "Railroad"), submit a joint Motion to Dismiss or Affirm pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States and move to dismiss or affirm on the grounds that the judgment of the Supreme Court of Illinois rests on an adequate non-federal basis, that the appeal does not present a substantial federal question or that the federal question on which the decision of the cause depends is so unsubstantial as not to warrant further argument.

STATEMENT OF THE CASE.

Preliminary Statement.

As Appellar''s Jurisdictional Statement relates, this is an appeal from a final judgment and decision entered by the Supreme Court of Illinois which confirmed the orders of the Illinois Commission requiring Central Illinois Public Service Company (hereinafter called "Power Company") and the Railroad to take steps which would immunize the Railroad's train-stop system from interference caused by escaping current from the Power Company's transmission lines and to divide the cost of such rectification between the Railroad and the Power Company. The opinion of the Illinois Supreme Court is reported in 18 Ill. (2d) 506 and 165 NE (2d) 322. Appellant's statements with respect to the technical jurisdiction of this court, the dates of the various orders, the taking of this appeal and the presentation of a purported federal question in the Illinois courts are correct. However, the background and facts resulting in the Commission's orders are inadequately stated.

The Facts.

In July, 1953, the Railroad filed with the Illinois Commission a complaint setting forth that since 1948 electric current had been escaping from the Power Company's transmission lines causing serious interference with the Railroad's train-stop system and requested, in the interest of public safety and security, that the Commission require the Power Company to take such steps as may be necessary to correct the interference. The Commission set the complaint for hearing and thereafter testimony was presented by both parties and a record made of over two thousand pages.

The evidence disclosed that in 1922 the Interstate Commerce Commission in Docket 13413 ordered the Illinois Central Railroad and certain other railroads to install automatic train-stop or train-control devices (Abst. 37)[1]. Pursuant to that directive, the Railroad conducted tests and determined that the proper facility would be the continuous automatic train-stop system, which system was installed and went into operation between Champaign and Branch Junction, Illinois, a distance of 121.8 miles, in January, 1926. Along this line of track the transmission lines of the Power Company paralleled and at points crossed over the tracks of the Railroad (Abst. 124-125). The train-stop system was installed to operate on 60 cycle alternating current as that was readily available (Abst. 93) and was the frequency which was supplied by the Power Company (Abst. 125). In fact, it was questioned whether the Railroad could have installed a 100 cycle system at that time since the Power Company could not have furnished adequate three phase service (Abst. 196). Prior to its installation, tests were conducted for over a year to see if there was any foreign current which would interfere with the 60 cycle system and none was detected (Abst. 44, 66, 68-69). It was not until 22 years after the installation that foreign current first began to affect the system (Abst. 46, 67, 73). That was in 1948 and continued with increased intensity through 1953. The effect of foreign current in the train-stop system is to cause false signals, *i. e.*, green light when actually a red light should show and vice versa (Abst. 44-45, 62-63). Joint tests conducted by the Railroad and the Power Company during 1952 and

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[1] Abstract references are to pages of the Abstract filed in the Supreme Court of Illinois, which has also been filed in this Court.

1953 showed that when the lines of the Power Company were de-energized all foreign current in the track disappeared (Abst. 49, 51-53, 55-56, 58-60).

Over the particular trackage in question, the Railroad operated 12 regular passenger trains, 32 freights and numerous unscheduled trains (Abst. 26). In 1952, over 800,000 passengers were carried. Speeds of passenger trains are in the neighborhood of 100 miles per hour, while freights operate from 50 to 60 mph (Abst. 26-27). The most dangerous aspect of false signals is that they are most frequent when the weather is wet and foggy which is the very time when proper signals are most important (Abst. 50, 73).

During the period from 1926 to 1953, the Power Company changed, extended and enlarged its transmission lines more than twenty times, sometimes requesting Commission approval and other times not (Abst. 128, 130, 169-172). Some of this construction was multi-grounded and other ungrounded, some "Y" circuits and others delta. During the same time the Power Company increased its transmission lines parallel to the Railroad from 61 miles to 113.5 miles (Abst. 189) and the load carried by said lines from 125 million KWH to 1 billion 540 million KWH, an increase of 1,132% (Abst. 269-270).

The elimination of the foreign current from the transmission lines of the Power Company could be accomplished by converting all the multi-grounded lines to a delta type of circuit (Abst. 76-77). Also, the interference could be eliminated by (a) moving the power lines away from the Railroad, (b) employing adequate transposition, (c) reducing the loads on given power lines and building additional lines to handle increased need for power, (d) use of ungrounded multi-conductor cable instead of open wire, and (e) installing larger wires containing more copper on

existing lines (Abst. 76-77, 82). However, the cost of changing the Power Company facilities would amount to millions of dollars (Abst. 126-127, 135). The witnesses for the Power Company all stated that the only practical solution was to convert the Railroad's train-stop system from 60 cycles to 100 cycles which would accomplish the desired result (eliminate false signals) at a far less expense (Abst. 126, 135, 146).

Other electric utilities in Illinois have voluntarily recognized responsibility for interference caused by current escaping from their lines and have assumed the entire cost of adjusting the Railroad's communication circuits affected (Abst. 196-197).

While at first it was estimated that the conversion would cost $170,000, the revised cost estimate after the work began was $147,000 (Abst. 277).

The Commission Orders.

1. The order of October 26, 1954,[2] elaborately discusses the facilities involved, the evidence presented and makes 47 specific findings of fact in support of the order directing the Railroad and the Power Company to "eliminate the continuing hazard to the public and the employees of the Railroad Company which is caused by interference of the Power Company's facilities with the operation of the Railroad's facilities." While the order finds that the Power Company could avoid the escape of current by changing and altering its facilities, yet, the most economical way to rectify the dangerous situation would be by changing the Railroad's facilities to operate on 100 cycles instead of 60 cycles. The order thereupon directed the joint action

[2] Reproduced as Appendix (F), page 19a of Appellant's Jurisdictional Statement.

of the two utilities by requiring the Railroad to change its automatic train-stop system to operate on 100 cycles and the Power Company to furnish current to the Railroad at 100 cycles. It was further provided that if the utilities could not agree within thirty days on the division of costs in carrying out the Commission's order, a further hearing should be held to determine the proportion each should bear.

2. The order of March 8, 1955 [3] was entered after the Power Company refused to carry out the obligation imposed by the October 26, 1954 order. It was issued after a further hearing which showed the amount of cost involved in correcting the unsafe condition. The order found that the cost would be approximately $170,000 with about half of that amount required for converting and supplying 100 cycle current and the rest for the conversion of the train equipment to operate on that frequency. It was therefore ordered that each utility bear fifty per cent of the actual cost.

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[3] Reproduced as Appendix (G), page 69a of Appellant's jurisdictional Statement.

ARGUMENT.

I.

The judgment of the Supreme Court of Illinois rests on an adequate non-federal basis.

Throughout the proceedings involved in this litigation Appellant has misconstrued the true subject matter of the litigation, *i.e.*, the operation and maintenance of the Power Company's transmission lines and the State's jurisdiction over such operation. The complaint filed by the Railroad alleged that the Power Company was operating its facilities in such a manner as to permit current to escape from its transmission lines and interfere with the Railroad's train-stop control system, thereby creating an unsafe and improper condition. The complaint prayed that the State, through its utility commission, require the Power Company to take such steps as would be necessary to abate such interference. The State's jurisdiction over the Power Company has never been questioned, either in the courts below or in this court. The obvious reason for this is that the Power Company derives its franchise to operate from the State of Illinois and, as a public utility, is subject to the provisions of the Illinois Public Utilities Act.[4]

Neither the Illinois Commission nor the Illinois Supreme Court ever determined that the relief sought by the complaint originally filed by the Railroad could not be granted, even though this is inferred in Appellant's Jurisdictional Statement (page 11). On the contrary, both the Illinois Commission and the Supreme Court of Illinois recognized that regardless of the State's jurisdiction over the train-stop system of the Railroad, the State of Illinois and the

[4] Illinois Revised Statutes 1959, Chapter 111-2/3.

Illinois Commission had unquestioned jurisdiction over the Power Company and could require it to operate and maintain its facilities in a safe and proper manner, even to the extent of requiring changes and improvements. This non-federal basis for the judgment and decision of the Supreme Court of Illinois is clearly shown by the following language of its opinion [18 Ill. (2d) at pages 512-515]:

"This is a special statutory proceeding instituted by the Railroad pursuant to section 64 of the Public Utilities Act. (Ill. Rev. Stat. 1957, chap. 111 2/3, par. 68.) The *Commission had jurisdiction over both the Power Company and the Railroad* as public utilities within the meaning of section 10.3 of the act. (Ill. Rev. Stat. 1957, chap. 111 2/3, par. 10.3.) As such public utilities deriving their franchises from the State, both must submit to the burdens, conditions and regulations imposed by the State pursuant to its police power to protect the safety and the security of the public. *Chicago and Northwestern Railway Co.* v. *Commerce Com.*, 326 Ill. 625.

"Sections 32, 49, 50 and 57 of the act, (Ill. Rev. Stat. 1957, chap. 111 2/3, pars. 32, 49, 50 and 61,) provide in the most comprehensive terms, that the Commission shall have the power to require changes, additions and improvements in connection with the facilities of existing public utilities to promote the security and safety of its employees and the public. *Brotherhood of Railroad Trainmen* v. *Elgin, Joliet and Eastern Railway Co.*, 382 Ill. 55; *Chicago, Burlington and Quincy Railroad Co.* v. *Commerce Com. ex rel. Brotherhood of Railroad Trainmen*, 364 Ill. 213; *Chicago Motor Coach Co.* v. *City of Chicago*, 337 Ill. 200; *Village of Atwood* v. *Cincinnati, Indianapolis and Western Railroad Co.*, 316 Ill. 425.

"The authority for the exercise of jurisdiction over the Power Company is not that it has acted negligently or with malice. Rather the power of the Commission arises from the fact that the exercise of the Power Company's franchise by the transmission of current in close proximity to the Railroad's tracks has created a condition which caused the existence of false signals and such signals constitute a hazard to the safety of the public and the employees of the Railroad. Such condition gives rise to power and jurisdiction in the Commission without regard to fault on the part of either public utility.

• • • •

"The record in the case at bar clearly shows that the exercise of the respective franchises of the two utilities constitutes an extreme hazard to the public. We find no substantial evidence that this hazard arose from the negligence or malice of either utility. Nevertheless it was the duty of the Commission to protect the public safety regardless of the negligence or care of the utilities involved.

"*If this could have been accomplished at reasonable cost by a relocation of the Power Company transmission lines, we have no doubt concerning the power of the Commission to order such relocation under section 49 of the act.* But the Commission properly considered that the public must ultimately bear the burden of the cost of such relocation by reason of a change in the rate structure of the utility. It was conceded by all witnesses before the Commission that the most economically feasible solution to this hazard to public

safety would be a conversion of the train-stop system to 100-cycle current." (Emphasis added) [5]

Appellant conceded in the hearings that to correct the situation through the removal of its transmission lines or to improve or change its existing equipment or facilities would be extremely costly and that the best engineering solution (*i.e.* the most economically feasible manner of eliminating a grave hazard caused by the escaping electric current) was to immunize the Railroad's train-stop system by changing it from 60 cycles to 100 cycles. Consequently, it is readily apparent that the Illinois Commission had the right, if not perhaps the duty, to choose the most economical means of bringing about the ultimate result, since it is the public, in the long run, which must bear the cost through rates for service, whether it be the rates of the Power Company or the Railroad. The Supreme Court of Illinois recognized this principle in its decision, stating [18 Ill. (2d) at pages 517-518]:

> "We need only decide whether the Commission can choose the most economically feasible manner of eliminating a grave hazard to the people of this State, when such a choice requires action that is clearly permissible under Federal law. We find in the Interstate Commerce Act no intention to preclude such an exercise of the police power.
>
> "In essence the Commission has found a grave hazard to public safety existed by reason of foreign current escaping from the Power Company transmission lines. The Commission could solve this problem by exercising its undoubted jurisdiction over the facilities of the Power Company, but the cost of moving the power

[5] The pertinent parts of the applicable provisions of the Illinois Public Utilities Act are set out in Appendix A attached hereto.

lines away from the tracks of the Railroad would be excessively high and would place an undue burden on its customers by an ultimate increase in its rate base. The Railroad could, and has, converted its facilities at far less cost, and in a manner thoroughly compatible with Federal law."

Unquestionably, the Power Company could have been required to take measures to change its facilities even at considerable cost. Instead, the Power Company was required to contribute a much smaller amount so as to immunize the Railroad's facilities from the interference caused by the Power Company's facilities. This action does not now give it the right to question the validity of the Commission's order on the basis of the order's direction to the Railroad since the action required of the Railroad does not injure Appellant nor deprive it of a constitutional right, but, on the contrary, gives Appellant a benefit to which it otherwise would not be entitled. See *In Re Pittsburgh Rys. Co.*, 113 Fed. Supp. 233, 234 (D.C. W.D.Pa., 1953.) Appellant, being subject to the jurisdiction of the Illinois Commission and responsive to its orders, may not question the validity of another portion of that Commission's order where the portion affecting it will not be influenced by the validity or invalidity of the protested portion. The cases cited by Appellant regarding the constitutionality of a statute by a party not affected by the unconstitutional portions are inapplicable.

Thus, it is clear that the purported federal question which Appellant presented was not necessary to the determination and decision of the Supreme Court of Illinois. When the decision of the highest court of a state can be sustained upon either a state or federal ground and the state ground is sufficient to sustain the judgment, the ap-

peal should be dismissed. *Williams* v. *Kaiser*, 323 U.S. 471, 477; 65 Sup. Ct 363; 89 L. ed. 398; *Honeyman* v. *Hanan*, 300 U.S. 14, 21; 57 Sup. Ct. 350; 81 L. ed. 476. It is not enough that Appellant presented a purported federal question and argued it, but it must appear that the judgment of the Supreme Court of Illinois could not have been given without deciding it. Here, the judgment is fully sustainable without reference to any federal question. Consequently, the attempted appeal by Appellant should be dismissed.

II.

The appeal does not present a substantial federal question.

It is now well settled by numerous decisions of this court, under remarkably similar factual situations, that the various states have the inherent power to enact reasonable regulations for the protection of the health, safety and general welfare of persons within their respective confines, provided (1) that such regulations do not directly burden interstate commerce, (2) that such regulations are not in conflict with or repugnant to any action taken by Congress, even though such regulations incidentally affect interstate commerce, and (3) that Congress has not evidenced an intent to completely pre-empt the area of regulation involved. *Terminal Assn.* v. *Trainmen*, 318 U.S. 1, 6-7, 63 Sup. Ct. 420, 87 L. ed. 571; *California* v. *Thompson*, 313 U.S. 109, 113, 61 Sup. Ct. 930, 85 L. ed. 1219; *Southern Pac. Co.* v. *Arizona*, 325 U.S. 761, 766-767, 65 Sup. Ct. 1515, 89 L. ed. 1915.

Accordingly, Appellant's assertion that substantial federal questions are raised is not persuasive, particularly in view of the fact that the order appealed from merely implements such federal action as has been taken. Further, this court has specifically held that Section 26 of the In-

terstate Commerce Act permitting the Interstate Commerce Commission to order the installation of train-stop and control devices does not operate to exclude state regulations designed to protect the health and safety of the public. *Southern Pac. Co.* v. *Arizona*, 325 U.S. 761, 766, 65 Sup. Ct. 1515, 89 L. ed. 1915. The opinion of the Supreme Court of Illinois recognizes this fact and states [18 Ill. (2d) at page 517]:

> "It is apparent that the present exercise of the police power by the Commission neither burdens interstate commerce nor conflicts with any Federal act or regulation. However, the Power Company insists that Congress has so far occupied the field of train-stop regulation that any action by a State in that area is precluded, and cites *Napier* v. *Atlantic Coast Line Railroad Co.*, 272 U.S. 605, 71 L. ed. 432, in support of its contention. Nevertheless it was held in *Southern Pacific Co.* v. *Arizona ex rel. Sullivan*, 325 U.S. 761, 89 L. ed. 1915, that this specific portion of the Interstate Commerce Act did not preclude all State regulation under the police power. The Supreme Court stated at 89 L. ed. 1922: 'Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested. (citations), or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy.' Also see *Kelly* v. *Washington*, 302 U.S. 1, 82 L. ed. 3."

In *Kelly* v. *Washington*, 302 U.S. 1, 10, 58 Sup. Ct. 87, 82 L. ed. 3, this court succinctly stated the general rule on preemption as follows:

> "The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together'."

In this case, not only is the "direct and positive" repugnance or conflict lacking, but there is no repugnance or conflict at all between the state and federal action.

The order of the Illinois Commission merely required the Railroad to change the operation of its train-control system from 60 cycles per second to 100 cycles per second and ordered the Power Company to provide the necessary 100 cycle current.

The Interstate Commerce Commission has never prescribed the cycles at which the Railroad is to operate its train-control system.[6] On the contrary, the Interstate Commerce Commission in its report In the Matter of Automatic Train Control Devices, Docket No. 13413, 69 I.C.C. 258, stated, page 264:

> "The essential safety function of any automatic train-stop device is to stop a train where a dangerous condition exists ahead of the train, when the engineman for any cause fails to take proper action to stop.
> • • •
> "Our investigations have shown that a number of types of devices are available to meet the requirements laid down by us."

The ICC then went on to point out examples of various types that met its requirements and its order only prescribed *general* requirements as to what a train-control device should accomplish and how it should be designed

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[6] In the matter of automatic train-control devices, 69 I.C.C. 258, 281.

and constructed. The type of device and the specific phase of design, including the cycle on which the train-control equipment would operate, was left to the discretion of the individual railroads involved in that proceeding.

Appellee Railroad originally chose 60 cycles because (a) exhaustive tests showed that the proposed system would operate without interference from outside sources at that time and (b) 100 cycle current was not readily available in the territory prescribed. After the facilities were installed, they were inspected and approved by the Interstate Commerce Commission by order dated August 11, 1926, in Docket I.C.C. 13413 (Sub. 20)[7]. There is no requirement in that order designating 60 cycle or any cycle current as mandatory for the operation of the train control system. The system installed by Appellee Railroad continued to operate satisfactorily until about 1948. By that time Appellant had extended and added to its lines paralleling and crossing the Railroad's right of way and increased the magnitude of current transmitted by 1132%.

Rather than being in conflict with the order of the Interstate Commerce Commission, the orders of the Illinois Commission are in direct compliance and are a necessary compliment. The ICC order approving the train-stop control which had been installed said (115 I.C.C. 256 at 269):

> "The presence of stray or foreign current in the track rails could, under certain circumstances, cause serious trouble and this is mentioned here, inasmuch as it will be necessary to watch the matter and, should such trouble develop, to promptly employ adequate means for over-coming the difficulty."

---

[7] In the matter of automatic train-stop devices of Union Switch & Signal Company on Illinois division of Illinois Central Railroad, 115 I.C.C. 256.

When such stray or foreign current did manifest itself, some twenty years after the order of the ICC, the Railroad did exactly what the Interstate Commerce Commission ordered. It determined the source of the stray or foreign current and then did "promptly employ adequate means for overcoming the difficulty" by filing a complaint with the only agency which had jurisdiction over the Power Company and its facilities, plant and equipment. Such complaint sought the authority of the Illinois Commission to compel the Power Company to change or improve its facilities or to cease and desist from transmitting over its lines electric energy of such magnitude that it could not be properly contained within reasonable limits of the existing transmission and distribution lines. The Illinois Commission after exhaustive hearings exercised its jurisdiction over the two utilities in the most feasible way without in any manner interfering with the provisions of Section 26 of the Interstate Commerce Act or the ICC order of August 11, 1926.

The Illinois Commission's order merely directed the Railroad to go to 100-cycle frequency rather than 60 cycles. All other phases of design and construction covered by the Interstate Commerce Commission orders, were left untouched and intact. The Railroad responded to the order of the Illinois Commission and changed to 100 cycles in 1955. Although the Interstate Commerce Commission was and is aware of the change in the cycle at which the Railroad's train control system operates, it has never indicated that the Railroad has in any manner violated the orders of the ICC. Clearly, the order of the Illinois Commission cannot be taken as directed against interstate commerce or in conflict with the Interstate Commerce Act but, on the contrary, must be taken as having been issued in aid, not in obstruction, of interstate commerce and for the protection of those engaged in such commerce.

III.

The orders of the Illinois Commission do not contravene the 14th Amendment.

Appellant asserts the orders of the Illinois Commission constitute a taking of its property in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States. This argument completely disregards the fact that the orders of the Illinois Commission were entered pursuant to the police power of the State of Illinois as well as to specific provisions of the Public Utilities Act of Illinois.[8] It is firmly established that one of the fundamental functions of the police power is to promote the public safety by regulating dangerous occupations and restraining dangerous practices. Moreover, the protection of the safety of persons is one of the traditional uses of the police power of states (*Queenside Hills Co.* v. *Saxl*, 328 U.S. 80, 82, 66 Sup. Ct. 850, 90 L. Ed. 1096) and action by any state in the interest of the public safety is clearly within the proper exercise of such power.

As heretofore indicated, the Illinois Commission and the Supreme Court of Illinois found that current was escaping from the Power Company's lines and creating "a grave hazard to the people of this State." To correct this imminent and continuing hazard to the public, the Power Company was first ordered to cooperate in a program to negate the effect of the interference by making 100 cycle current available to the Railroad. Power Company failed to comply with that order. Upon further hearing and it appearing that the Railroad had begun the change-over of its train-stop system from 60 cycle operation to 100

[8] Illinois Revised Statutes 1959, Chapter 111-2/3 Sections 32, 49, 50, 61, Appendix A.

cycle operation, and it further appearing that the Power Company had not made 100 cycle current available, the Illinois Commission ordered the Railroad to install necessary equipment to convert Power Company's current to 100 cycle and required the Power Company to bear one-half of the total cost of the immunization program. Further, the Illinois Commission found that the program it had required to be followed would insure the safety of the public at the lowest possible cost, not only to the Power Company but also to the public, which ultimately would have to bear the cost of whatever solution was adopted. Thus police power was exercised in the most reasonable manner possible. Accordingly, it is clear that Appellant's statement (Jurisdictional Statement, p. 27) that ". . . the allocation of cost order of the Illinois Commission is simply a taking of the property of Appellant for the benefit of a private person . . ." is wholly without foundation.

The public exigencies not only justified but demanded that the Illinois Commission exercise its authority over private property rights so as to correct a dangerous situation *created by the facilities of the Power Company:*

Power Company having devoted its private property to a use in which the public has an interest must, to the extent of the interest acquired by the public, submit to the control of its property by the public for the common good, even though the regulation requires the assumption of a burden greater than that generally borne. This principle was concisely stated by this court in *Packard* v. *Banton,* 264 U.S. 140, page 145, as follows:

> "* * * Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by

government sufferance or permission. In the latter case the power to exclude altogether generally includes the lesser power to condition and may justify a degree of regulation not admissible in the former. See *Davis* v. *Massachusetts*, 167 U.S. 43."

CONCLUSION.

We respectfully submit, therefore, that the judgment of the Supreme Court of Illinois rests on an adequate non-federal basis, that Appellant has presented no substantial question for the decision of this court, that the federal questions on which the decision of the cause depends are so unsubstantial as not to warrant further argument and that the appeal should be dismissed or, in the alternative, that the judgment and decree of the Supreme Court of the State of Illinois should be affirmed.

Respectfully submitted,

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September 15, 1960.

Appendix A. follows.

APPENDIX A.

Pertinent Parts of the Applicable Provisions of the Illinois Public Utilities Act:

Section 32 (Illinois Revised Statutes, 1959, Chap. 111 2/3, Par. 32) provides, in part:

> "Every public utility shall furnish, provide and maintain such * * * facilities as shall promote the safety * * * of its patrons, employees, and public * * *."

Section 49 (Illinois Revised Statutes, 1959, Chap. 111 2/3, Par. 49) provides:

> "Whenever the Commission, after a hearing * * * shall find that the * * * facilities * * * or the methods of * * * transmission * * * employed by it, are * * * unsafe, improper * * * the Commission shall determine the * * * safe, proper * * * equipment, * * * facilities, * * * or methods to be observed, furnished, constructed, enforced or employed."

Section 50 (Illinois Revised Statutes, 1959, Chap. 111 2/3, Par. 50) provides:

> "Whenever the Commission, after a hearing * * * shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, * * * to promote the security or convenience of its employees or the public, * * * the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made * * *. If any additions, extensions, repairs, improvements or changes, * * * which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements * * *

have been ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of costs of such additions, extensions, repairs, improvements or changes * * *. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost * * *, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility."

Section 57 (Illinois Revised Statutes, 1959, Chap. 111 2/3, Par. 61) provides in part:

"The Commission shall have power, after a hearing * * * to require every public utility to maintain and operate its plant, equipment or other property in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances."